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INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statutes and regulations involved	2
Statement	3
Specification of errors to be urged	5
Summary of argument	6
Argument:	
I. Section 35 of the Criminal Code as amended in 1934 prohibits the making of false statements and affidavits in matters within the jurisdiction of any department or agency of the United States whether or not the matter concerns a claim against the Government or property involved in operations of the Government	9
A. The language of the 1934 Amendment	10
B. The legislative history of the Amendment	13
C. The grounds of decision adduced by the District Court	22
II. Section 35 of the Criminal Code, as amended, was not impliedly repealed by the Connally Act, insofar as it would apply to the filing of false affidavits with a Federal Tender Board created pursuant to that Act	30
Conclusion	35
Appendix A	36
Appendix B	43

CITATIONS

Cases:

Capone v. *United States*, 51 F. (2d) 609, certiorari denied, 284 U. S. 669 — 33

Fuller v. *United States*, 110 F. (2d) 815, certiorari denied, October 14, 1940, No. 220, present Term — 29

General Motors Acceptance Corp. v *United States*, 286 U. S. 49 — 32

Madden v. *United States*, 80 F. (2d) 672 — 33

Mason v. *United States*, 260 U. S. 545 — 23

Palmer v. *Massachusetts*, 308 U. S. 79 — 28

Panama Refining Co. v. *Ryan*, 293 U. S. 388 — 20, 21, 27

Posadas v. *National City Bank*, 296 U. S. 497 — 32

Spivey v. *United States*, 109 F. (2d) 181, certiorari denied, 310 U. S. 631 — 29

Cases—Continued. Page

Texas v. *United States*, 292 U. S. 522 23
Tigner v. *Texas*, 310 U. S. 141 28
United States v. *America Trucking Ass'ns*, 310 U. S. 534 ..... 23, 28
United States v. *Borden Co.*, 308 U. S. 188 ..... 9, 31
United States v. *Burroughs*, 289 U. S. 159 32
United States v. *Cohn*, 270 U. S. 339 ..... 6, 11, 12
United States v. *Crittenden*, 24 F. Supp. 84 29
United States v. *Curtiss-Wright Corp.*, 299 U. S. 304 31
United States v. *Dickerson*, 310 U. S. 554 ..... 23, 24
United States v. *Goldsmith*, 108 F. (2d) 917, certiorari denied, 309 U. S. 678, rehearing denied, 310 U. S. 657 ..... 29, 30
United States v. *Jackson*, 302 U. S. 628 32
United States v. *Jin Fuey Moy*, 241 U. S. 394 25
United States v. *Keitel*, 211 U. S. 370 ..... 24, 25, 26
United States v. *Mellon*, 96 F. (2d) 462, certiorari denied, 304 U. S. 586 29
United States v. *Missouri Pacific Railroad Company*, 278 U. S. 269 26
United States v. *Presser*, 99 F. (2d) 819 29
United States v. *Walter*, 263 U. S. 15 12
Wood v. *United States*, 16 Pet. 342 32

Statutes:

Revised Statutes, Sec. 4746, as amended by the Act of July 7, 1898, c. 578, 30 Stat. 718 24
Criminal Code:
Sec. 28 33
Sec. 35, as amended by the Act of June 18, 1934, c. 587, 48 Stat. 996 (U. S. C., Title 18, Sec. 80) 36
Sec. 125 (U. S. C., Title 18, Sec. 231) 27
Act of October 23, 1918, c. 194, 40 Stat. 1015 12
National Industrial Recovery Act of June 16, 1933, c. 90, 48 Stat. 195:
Sec. 9 (c) 38
Sec. 10 (a) 20
Connally "Hot Oil" Act of February 22, 1935, c. 18, 49 Stat. 30:
Sec. 5 (U. S. C., Supp. V, Title 15, Sec. 715d) 37
Sec. 6 (U. S. C., Supp. V, Title 15, Sec. 715e) 38
Act of June 14, 1937, c. 335, 50 Stat. 257 22
Act of April 4, 1938, c. 69, 52 Stat. 197 35
Act of June 29, 1939, c. 250, 53 Stat. 927 22

Miscellaneous:

78 Cong. Rec., Pt. 2, 2151, 2152 14
78 Cong. Rec., Pt. 3:
2707 14
2859 15
78 Cong. Rec., Pt. 4, 3724, 3725 15

Miscellaneous—Continued.

	Page
78 Cong. Rec., Pt. 6:	
5746	15
6778–6779	16
78 Cong. Rec., Pt. 8:	
8136–8137	17
8154	17
78 Cong. Rec., Pt. 10, 11270, 11271	18
78 Cong. Rec., Pt. 11, 11513	18
79 Cong. Rec., Pt. 1, 753, 760	22
79 Cong. Rec., Pt. 2, 2124, 2135, 2150	22
81 Cong. Rec., Pt. 5, 5321	22
84 Cong. Rec. Pt. 7, 7555, 7559, 7573	22
Executive Orders:	
No. 6979, issued February 28, 1935	39
No. 6980–B, issued March 1, 1935, Regulation XIV	39
No. 6980–C, issued March 1, 1935	40
Frey, *The Connally Act: Background*, in National Resources Committee, Energy Resources and National Policy, Part IV, Section II, p. 394	20
Hearings before Subcommittee on Finance, U. S. Senate, 75th Cong., 1st Sess., pp. 31, 33, 39, 43, 45	34
Hearings before Subcommittee of Committee on Interstate and Foreign Commerce, House of Representatives, 75th Cong., 1st Sess., pp. 135–139	34
H. R. 8046, 73d Cong., 2d Sess	14
H. R. 8912, 73d Cong., 2d Sess	17
H. Rep. No. 829, 73d Cong., 2d Sess	14, 15
H. Rep. No. 1463, 73d Cong., 2d Sess	17
H. Rep. No. 148, 74th Cong., 1st Sess	22
H. Rep. No. 817, 75th Cong., 1st Sess	22
H. Rep. No. 1762, 75th Cong., 3d Sess	35
H. Rep. No. 807, 76th Cong., 1st Sess	22
Interior, Annual Report of the Secretary, 1935	21
S. 2686, 73d Cong., 2d Sess	14
S. 3527, 73d Cong., 2d Sess	16
S. Rep. No. 288, 73d Cong., 2d Sess	14, 15
S. Rep. No. 1202, 73d Cong., 2d Sess	18
S. Rep. No. 14, 74th Cong., 1st Sess	22
S. Rep. No. 1497, 75th Cong., 3d Sess	35

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 245

THE UNITED STATES OF AMERICA, APPELLANT

v.

J. W. GILLILAND, RALPH GILLILAND, FRED. A. WILLIAMS, ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court (R. 43–59) is not reported.

JURISDICTION

The judgment of the District Court sustaining a demurrer to ten counts of the indictment was entered on May 16, 1940 (R. 61), and the order allowing an appeal on June 12 (R. 64). Probable jurisdiction was noted by this Court on October 14, 1940. The jurisdiction of this Court is conferred by the Act of March 2, 1907, c. 2564, 34 Stat. 1246, as

amended (U. S. C., Title 18, Sec. 682), otherwise known as the Criminal Appeals Act, and Section 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936 (U. S. C., Title 28, Sec. 345).

QUESTIONS PRESENTED

1. Whether Section 35 of the Criminal Code (U. S. C., Title 18, Sec. 80) as amended June 18, 1934, to prohibit the making or using of knowingly false statements and affidavits "in any matter within the jurisdiction of any department or agency of the United States" applies where the matter does not involve the money or property of the Government.

2. Whether this Court may consider the effect of a later statute as an implied repeal *pro tanto* of the statute on which the indictment was based when the issue was raised in support of the demurrer but was not determined by the District Court.

3. Whether Section 35 as amended, in so far as it would apply to the filing with a Federal Tender Board, pursuant to regulations under the Connally Act, of knowingly false monthly affidavits as to the amount of oil produced and received, was impliedly repealed *pro tanto* by the enactment of the Connally Act.

STATUTES AND REGULATIONS INVOLVED

The portion of Section 35 of the Criminal Code, as amended by the Act of June 18, 1934, c. 587, 48

Stat. 996, which is codified as Section 80 of Title 18 of the United States Code, is set forth in Appendix A, *infra*, p. 36. Sections 5 and 6 of the Connally "Hot Oil" Act of February 22, 1935, c. 18, 49 Stat. 30, 31–32 (U. S. C., Supp. V, Title 15, Secs. 715 d and e), are set forth *infra* pp. 37–38. Executive Order No. 6979, Regulation XIV of Executive Order No. 6980–B, and Executive Order No. 6980–C, promulgated under the Connally Act, are set forth *infra* pp. 39–42.

STATEMENT

The appellees (hereinafter referred to as "the defendants") were indicted on February 21, 1938, in the United States District Court for the Eastern District of Texas (R. 1–27). The indictment charged, in the first count, a conspiracy to violate Section 35 of the Criminal Code and the Connally Act and, in ten other counts, substantive offenses under Section 35. The defendants demurred to the indictment (R. 27–43). Their demurrer was overruled as to the conspiracy count and sustained as to the substantive counts (R. 61).

Eight of the substantive counts (2–9, inclusive, R. 9–22) alleged in substance that the defendants knowingly and wilfully caused to be filed with Federal Tender Board No. 1, Kilgore, Texas, a Monthly Producer's Report in the name of Oil, Inc., on a form provided by the United States Department of the Interior, Petroleum Administration, verified under oath by one of the defendants, which falsely stated the amount of petroleum pro-

duced during the month from designated oil wells. The tenth and eleventh counts similarly charged the filing of Monthly Pipe Line and Storage Reports in the name of Gilliland Refining Company, verified by one of the defendants, which falsely stated the amount of crude petroleum received from various producers. Each of the counts alleged that the affidavits were known to contain "false and fictitious statements relating to a matter within the jurisdiction of the Department of the Interior and the Secretary of the Interior and the Federal Tender Board No. 1, Kilgore, Texas."

The District Court held the substantive counts insufficient under Section 35 of the Criminal Code on the ground that the clause of that section, upon which they were based, applies only to "claims against, rights to, or controversies about funds or property involved in 'operations of the Government'" (R. 52). The opinion relied upon the doctrine of *ejusdem generis* to limit the broad language of the amendment of June 18, 1934, upon which the Government relied, to matters similar to those dealt with in other clauses of the section, ruled that the legislative history of the amendment is ineffective to "overturn well-established principles of interpretation" (R. 51), pointed to the large disparity between the maximum punishment under Section 35 and that under the Connally Act itself, and stressed the fact that to "hold with the prosecution in this case would be to say that Congress

intended to create a multitude of crimes with respect to operations of the innumerable and ever growing departments, bureaus, and agencies of the Government by the simple means of amending in general terms a statute which had always been understood to apply to matters in which the Government was financially interested" (R. 52).

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

(1) In sustaining as to counts two to eleven, inclusive, the demurrer to the indictment.

(2) In holding that the portion of Section 35 of the Criminal Code, as amended by the Act of June 18, 1934, c. 587, 48 Stat. 996 (U. S. C., Title 18, Sec. 80), upon which counts two to eleven of the indictment were predicated, applies only to matters in which the Government is financially interested.

(3) In holding that under the doctrine of *ejusdem generis* the words "in any matter within the jurisdiction of any department or agency of the United States," as contained in Section 35 of the Criminal Code as amended, are confined to such matters as claims against, rights to, or controversies about funds or property involved in "operations of the Government."

(4) In holding that the addition of the words "in any matter within the jurisdiction of any department or agency of the United States" to the pertinent portion of Section 35 of the Criminal

Code by the 1934 amendment did not broaden the scope and application thereof.

(5) In disregarding the deletion from the applicable portion of Section 35 of the Criminal Code by the 1934 amendment of restrictive language which had limited its application to false statements, affidavits, etc., in connection with matters involving money or property of the Government.

(6) In disregarding the Report of the Senate Judiciary Committee to the effect that a purpose of the amendments to the pertinent portion of Section 35 of the Criminal Code, which were subsequently incorporated by the 1934 Act, was to reach a large number of cases involving the shipment of "hot" oil, where false papers are presented in connection therewith.

SUMMARY OF ARGUMENT

I

The decision of the District Court that the provision of Section 35 of the Criminal Code, as amended by the Act of June 18, 1934, upon which the indictment was based, applies only to such matters as "claims against, rights to, or controversies about funds or property involved in 'operations of the Government'" is contrary to the specific language of the 1934 amendment and to the articulate purpose evidenced by its legislative history.

Prior to 1934, the provision was limited, as this Court held in *United States v. Cohn*, 270 U. S.

339, to cases where the specified falsifications were made for the purpose of obtaining the approval or payment of a claim against the Government, or of obtaining the money or property of the Government by fraud. The amendment eliminated the words imposing that restriction and substituted a phrase making the prohibition applicable if the falsification was made or used "in any matter within the jurisdiction of any department or agency of the United States * * *." Thus the amendment substituted "jurisdiction" for intent to cause pecuniary or property loss as the measure of the extent of the prohibition. In holding that under the amendment the "matter" must relate to a claim against or controversy about Government property, the District Court has imported into the amended statute a limitation which the language does not contain and which is substantially equivalent to the old limitation which the amendment explicitly removed.

The legislative history of the amendment shows that it was the culmination of an articulate effort to provide a broad sanction against wilful falsification in matters within the jurisdiction of governmental agencies; that to effectuate this purpose the language of the relevant clause of Section 35 of the Criminal Code was deliberately changed to eliminate the existing restrictions to cases involving attempts to obtain the money or property of the Government; and that the use of false affidavits in

connection with the regulation of "hot" oil shipments was one of the two specific instances which prompted the enactment of the amendment and which the amended statute was designed to reach. The use of false affidavits under the Connally Act is not significantly different from their use under the system of regulation established under Section 9 (c) of the National Industrial Recovery Act, in force at the time when the amendment to Section 35 of the Criminal Code was made. It is, therefore, literally true that the decision of the District Court contravenes not only the general purpose of the amendment, but one of its specific purposes as well.

Neither the principle of *ejusdem generis*, the broad scope of the statute, nor the disparity between its penalty and that provided for violations of the Connally Act, relied upon by the District Court, affords any justification for imposing upon Section 35 a restriction which is contrary both to the meaning and to the purpose of the amendment of 1934. The decision of the District Court is, moreover, contrary to that of the other courts which have passed upon the issue.

II

Section 35 of the Criminal Code, as amended, was not impliedly repealed by the Connally Act, in so far as it would apply to the filing of false affidavits with the Federal Tender Board created pursuant to the Act. This issue was not specifically passed upon by the District Court and it may be

doubted, therefore, whether the question is open in this Court on the Government's appeal, under the rule enunciated in *United States* v. *Borden Co.*, 308 U. S. 188, 206–208. In any event, it is plain that no implied repeal occurred. The Connally Act is in no way inconsistent with Section 35 of the Criminal Code and there is no evidence that it was intended to provide the exclusive sanction for dealing with falsification in affidavits filed under the system of enforcement authorized in general terms by Section 5. In so far as the Executive Order promulgated under the Connally Act covers the same ground as Section 35, it provides no more than a "cumulative, or auxiliary" sanction, paralleling not only Section 35, but the perjury statute as well. While there is no evidence that the Connally Act was intended to work an implied partial repeal of the provision of Section 35 of the Criminal Code which applies to false affidavits there is, on the other hand, convincing evidence that no such repeal was meant.

ARGUMENT

I

SECTION 35 OF THE CRIMINAL CODE AS AMENDED IN 1934 PROHIBITS THE MAKING OF FALSE STATEMENTS AND AFFIDAVITS IN MATTERS WITHIN THE JURISDICTION OF ANY DEPARTMENT OR AGENCY OF THE UNITED STATES WHETHER OR NOT THE MATTER CONCERNS A CLAIM AGAINST THE GOVERNMENT OR PROPERTY "INVOLVED IN OPERATIONS OF THE GOVERNMENT"

The decision of the District Court that Section 35 of the Criminal Code as amended by the Act of June 18, 1934, c. 587, 48 Stat. 996, applies only to

such matters as "claims against, rights to, or controversies about funds or property involved in 'operations of the Government'" (R. 52) is contrary to the specific language of the 1934 amendment and to the articulate purpose evidenced by its legislative history.

A. THE LANGUAGE OF THE 1934 AMENDMENT

Prior to 1934 the portion of Section 35 of the Criminal Code which comprises Section 80 of Title 18 of the United States Code provided:

> Whoever shall make or cause to be made or present or cause to be presented, for payment or approval * * * any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever, *for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder,* shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher,

> roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry; * * * shall be fined not more than $10,000 or imprisoned not more than ten years, or both (40 Stat. 1015–1016). [Italics ours.]

In *United States* v. *Cohn*, 270 U. S. 339, 347, this Court held that the provision did not apply to the obtaining of non-dutiable merchandise from a collector of customs, upon the posting of a bond, by falsely representing that the bill of lading had not arrived when in fact it was held by a bank for payment of the attached draft. The reference to presenting a "claim upon or against" the Government was held to relate "solely to the payment or approval of a claim for money or property to which a right is asserted against the Government, based upon the Government's own liability to the claimant" (pp. 345–346); and the reference to "defrauding the Government" was held to relate "to the fraudulent causing of pecuniary or property loss". In this connection the opinion pointed to "the context of the entire section [35] which deals with the wrongful obtaining of money and other property of the Government, with no reference to the impairment or obstruction of its governmental functions." (p. 347.)

Such was the language and interpretation of the governing provision of the statute when Congress enacted the amendment of June 18, 1934. By that amendment the words italicized above (p. 10) were

deleted and there was inserted, after the word "entry," (p. 11) the following phrase: "in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder."[1] The phrase confining the scope of the provision within the limits defined by this Court in *United States* v. *Cohn*, *supra*, was thus eliminated. A new phrase was added defining its scope not in terms of the purpose of the falsification but rather in terms of the nature of the proceeding in which it is made. Under the amended statute the specified falsehoods are condemned whether or not they are used to obtain the payment or approval of a claim against the Government or to defraud it of money or property. It is enough that the deception is practiced in a matter "within the jurisdiction" of a department or agency of the United States. If the District Court had looked to the words *eliminated* as well as those *added* by the amendment, it would have been abundantly clear that the essence of the change was to substitute "jurisdiction" for intent to cause pecuniary or property loss as the measure of the ex-

[1] The reference to "any corporation in which the United States of America is a stockholder" first appeared in the statute (*supra*, p. 10) by virtue of an amendment by the Act of October 23, 1918, c. 194, 40 Stat. 1015. It was held in *United States* v. *Walter*, 263 U. S. 15, 18, "to refer only to corporations like the Fleet Corporation that are instrumentalities of the government and in which for that reason it owns stock," an interpretation made to avoid constitutional doubt.

tent of the prohibition. In holding that under the amendment the "matter" must relate to a claim against or a controversy about government property [2] it is obvious that the District Court has imported into the amended statute a limitation which the language does not contain and which, moreover, is substantially equivalent to the old limitation which the amendment explicitly removed.

B. THE LEGISLATIVE HISTORY OF THE AMENDMENT

The legislative history of the 1934 amendment shows that it was intended to eliminate the requirement that the falsification threaten the pecuniary interests of the Government. It shows, moreover, that the amendment was intended to render the prohibition of the statute applicable to precisely the type of falsification alleged in the instant case.

First. The legislation apparently originated in a bill recommended in February, 1934 by the Secretary of the Interior to make punishable by imprisonment for not more than five years or a fine not exceeding $5,000

> every person who knowingly or wilfully makes * * * or in anywise procures

[2] The opinion of the District Court speaks of funds or property "involved in 'operations of the Government'" (R. 52), a phrase derived from the title of the chapter of Title 18 of the United States Code in which Section 80 appears. The Court does not indicate that this formula is intended to mean anything more than money or property owned by the Government or with respect to which it has a proprietary interest and the opinion as a whole suggests that it does not.

> the making or presentation of any false or fraudulent affidavit, declaration, certificate, voucher, or paper or writing purporting to be such, concerning any application, bond, bid, loan or payment thereof, or pertaining to any other matter within the jurisdiction of the Secretary of the Interior, Administrator of the Federal Emergency Administration of Public Works, or Administrator of the Code of Fair Competition for the Petroleum Industry * * *.

The bill was introduced as S. 2086, 73d Cong., 2d Sess. (78 Cong. Rec., Pt. 2, pp. 2151–2152) and H. R. 8046 (78 Cong. Rec., Pt. 3, p. 2707). The Secretary's letter, which in the Senate was printed with the bill, contained the following explanatory statement (78 Cong. Rec., Pt. 2, p. 2152; S. Rep. No. 288, 73d Cong., 2d Sess.; H. Rep. No. 829, 73d Cong., 2d Sess., p. 2):

> A large number of cases are arising constantly in the enforcement of the laws relating to the Interior Department; the transaction of business in connection with the Public Works Administration; in violations of the code of fair competition for the petroleum industry; and enforcement of regulations under section 9 (c) of the National Industrial Recovery Act of June 16, 1933, which are not susceptible of successful prosecution on charges of perjury, and there is no law at present under which prosecutions may be secured for the presentation of false papers.

The bill was favorably reported by the Senate Committee on the Judiciary (S. Rep. No. 288, *supra*). On the floor of the Senate it was amended to make it applicable to any matter "within the jurisdiction of any department or agency of the Federal Government" rather than to the Department of the Interior alone. Thus amended, it passed the Senate (78 Cong. Rec., Pt. 3, p. 2859). In the House of Representatives the bill was favorably reported (H. Rep. No. 829, *supra*), after the Committee had condensed the language and broadened its scope to apply to any department or agency of the Government or Government-owned corporation but had narrowed the ambit of the prohibition by requiring that the forbidden acts be done *"with intent to defraud the United States."* (See 78 Cong. Rec., Pt. 4, pp. 3724-3725.) In this modified form the bill passed the House (78 Cong. Rec., Pt. 4, p. 3725). The Senate agreed to these amendments by passing the House bill (78 Cong. Rec., Pt. 6, p. 5746). On April 17, 1934, the measure was vetoed by the President, whose message stated that the offenses involved were already condemned by Section 35 of the Criminal Code (U. S. C., Title 18, Sec. 80) carrying a punishment of not more than ten years imprisonment or a fine of not more than $10,000 and that the "bill is objectionable in that its result would be to reduce the punishment for certain

frauds against the United States" (78 Cong. Rec., Pt. 6, pp. 6778–6779).

Following the presidential veto the Secretary of the Interior renewed the recommendation which had resulted in the passage of the vetoed bill. On May 2, 1934, he wrote to the Chairman of the Senate Committee on the Judiciary [3] calling attention to the veto and enclosing a proposed bill [4] which differed from that which had been vetoed in that it did not require "an intent to defraud the United States" and provided a penalty of imprisonment up to 10 years and a fine not exceeding $10,000. Again the Secretary stated that the proposal "is intended to reach the large number of cases involving the shipment of 'hot' oil, where false papers are presented in connection therewith, and also those cases within the Public Works Administration where contractors are performing work payable from the Public Works Administration appropriation, and false certificates are made as to the actual wages paid."

The bill was introduced by Senator Ashurst on May 3 (S. 3527, 73d Cong., 2d Sess.)[4] but the

[3] His letter, set forth in Appendix B, *infra*, pp. 43–44, appears in the Committee's file on S. 3527, 73d Cong., 2d Sess.

[4] It provided: "That every person who knowingly or willfully makes or aids, or assists in the making, or in anywise procures the making or presentation of any false or fraudulent affidavit, declaration, certificate, voucher, paper, or writing purporting to be such, concerning any application, bond, bid, loan or payment thereof, or pertaining to any matter within the jurisdiction of any Federal department, estab-

recommendation which it embodied apparently bore fruit in the Senate in a different way. The Judiciary Committee had before it a bill (H. R. 8912) passed by the House to amend the portion of Section 35 of the Criminal Code which appears in Title 18 of the United States Code as Section 82, by providing for the punishment of injury to and depredations against Government property. That bill had been recommended by the Attorney General (H. Rep. No. 1463, 73rd Cong., 2d Sess.), had passed the House on May 5, 1934 (78 Cong. Rec., Pt. 8, pp. 8136–8137), and had been referred to the Senate on May 7 (78 Cong. Rec., Pt. 8, p. 8154), a few days after the Secretary's letter to the Chairman of the Senate Committee. The Senate Judiciary Committee approved the bill enacted by the House, with a clarifying modification and two new amendments to a clause of Section 35 which the House bill did not affect. These new amendments worked the changes in Section 35 which are in issue here, eliminating from the second clause the phrase requiring an intent to obtain the payment of a claim or to defraud the Government and inserting the phrase rendering the prohibition broadly applicable to any matter within the jurisdiction of any department or agency of the United States (78 Cong. Rec., Pt.

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lishment, agency, office, board, or commission, shall be punished by a fine not exceeding $10,000 or by imprisonment for a term of not more than ten years, or by both such fine and imprisonment."

10, pp. 11270–11271). In explanation of these amendments, the Committee report said (S. Rep. No. 1202, 73d Cong., 2d Sess., p. 1):

> The first two committee amendments were proposed by the Department of the Interior for the purpose of reaching a large number of cases involving the shipment of "hot" oil where false papers are presented in connection therewith, and also those cases within the Public Works Administration where contractors are performing work payable from the Public Works Administration appropriation and false certificates are made as to the actual wages paid.

The bill became law in the form in which it was recommended by the Senate Committee. It passed the Senate on June 13, 1934 (78 Cong. Rec., Pt. 10, p. 11271),[5] and on June 14 the Senate Amendments were read in the House which concurred without discussion (78 Cong. Rec., Pt. 11, p. 11513).

The history of the Act of June 18, 1934, thus leaves no room for doubt that the relevant clause of Section 35 of the Criminal Code was amended

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[5] In explaining the proposed amendment to the Senate, Senator King, speaking on behalf of the Judiciary Committee, did not refer specifically to "hot" oil cases, but he did make the following relevant statement: "There is nothing which permits us to make an investigation and prosecute persons who are engaged in the 'kick-back' practice. They make false returns, claiming that they paid certain amounts to their employees, when they have not done so. This bill just amends the law so as to give the Federal Government authority to deal with that class of cases" (78 Cong. Rec., Pt. 10, p. 11270). There was no discussion.

for the precise purpose of providing a broad sanction against wilful falsification in matters within the jurisdiction of governmental agencies; that to effectuate this purpose the language was deliberately changed to eliminate the existing restriction to cases involving attempts to obtain the money or property of the Government; and that the use of false affidavits in connection with the regulation of "hot oil" shipments was one of the two specific instances which prompted the enactment of the amendment and which the amended statute was designed to reach.

Second. It is of course true that in speaking of the "large number of cases involving the shipment of 'hot' oil, where false papers are presented" both the Senate Committee and the Secretary of the Interior referred to cases arising under Section 9 (c) of the National Industrial Recovery Act of June 16, 1933, c. 90, 48 Stat. 195, 200, and the regulations promulgated thereunder, rather than to cases under the Connally Act, which had not yet been passed. Since the legislation was deliberately framed in general terms, this distinction would not be material even if the false affidavits alleged in the present indictment were markedly different in nature and function from the "false papers" which called for legislative attention in 1934. The fact is, however, that they are not. The system of enforcement created under the Connally Act is substantially the same as that prevailing when this Court held Section 9 (c) unconstitu-

tional in *Panama Refining Co.* v. *Ryan*, 293 U. S. 388; and the system prevailing at that time was simply an elaboration upon that prevailing in the spring of 1934.

Until October 18, 1934, the regulations promulgated by the Secretary of the Interior under Section 9 (c) required in substance that producers file monthly affidavits with the Division of Investigations of the Department of the Interior setting forth their daily production and their sales and affirming that no petroleum had been produced or withdrawn from storage in violation of state law; that purchasers, shippers, and refiners file monthly affidavits of their receipts; and that transporting agencies receive no petroleum for shipment without an accompanying affidavit of the shipper that the oil was lawfully produced and withdrawn. See *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 405–408. This was the "affidavit system" of control (Frey, *The Connally Act: Background*, in National Resources Committee, Energy Resources and National Policy, Part IV, Section II, p. 394) which was in operation in June 1934, when Section 35 of the Criminal Code was amended.* On October

*It is not without interest that when new forms for use in the East Texas area were approved by the Secretary of the Interior on July 20, 1934, by an order under Sections 9 (c) and 10 (a) of the National Industrial Recovery Act, they directed attention to the penalty under Section 35 and quoted the language of the amended clause (Forms O. E. S. 1, 2, 3, 4, 5, 6, Department of Interior, Division of Investigations).

18, the system was strengthened by the establishment, upon the order of the Secretary of the Interior, of a Federal Tender Board for east Texas. Under the new regulations of that date, a certificate of clearance, issued by the Board, was substituted for an affidavit of legality as the condition precedent to the movement of petroleum from the east Texas field. The "tender" system did not, however, eliminate the affidavits or reduce their importance; it provided a method for utilizing them more efficiently. As the Secretary of the Interior stated in his Annual Report for 1935 (p. 36):

> Certificates of clearance, or tenders, were approved by the Federal Tender Board when the petroleum or petroleum products were shown on the basis of the applicant's reports, the accounting record, and the specific examination of examiners to have been produced in accordance with the quotas established by the Railroad Commission of Texas.

The system of monthly affidavits and tenders continued until the decision in the *Ryan* case on January 7, 1935, and was speedily re-established upon the passage of the Connally Act shortly thereafter [7] (Act of February 22, 1935, c. 18, 49 Stat. 30).

[7] Section 5 (a) of the Connally Act (Appendix A, *infra*, p. 37) authorizes the President to prescribe regulations for the enforcement of that Act, including regulations requiring reports, affidavits, etc., relating to the production and disposition of petroleum. Section 5 (b) authorizes the President to require certificates of clearance for petroleum prod-

It is, therefore, literally true that the decision of the District Court that the amendment of Section 35 of the Criminal Code by the Act of June 18, 1934 is inapplicable to monthly affidavits filed with the Federal Tender Board pursuant to the Connally Act contravenes not only the general purpose of the amendment but one of its specific purposes as well.

C. THE GROUNDS OF DECISION ADDUCED BY THE DISTRICT COURT

First. The District Court refused to consider the

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ucts moving in interstate commerce from any particular area and to establish a board in such area to issue clearance certificates. By Executive Order No. 6980–B, approved by the President March 1, 1935, regulations were promulgated. Regulation XIV, *infra*, p. 39, requires producers, refiners, and others to file with the Board in their area monthly reports under oath on forms approved by the Secretary of the Interior. By Executive Order No. 6980–C, approved by the President March 1, 1935, *infra*, pp. 40–42, Federal Tender Board No. 1 was created, the regulations were declared to apply to all petroleum originating in the East Texas Field and forms for reports and affidavits were specifically approved, including Forms C and D involved in the instant case.

That Congress has regarded the Connally Act as a continuation by constitutional means of the policies worked out under Section 9 (c) of the National Industrial Recovery Act is clear from the history of its enactment in 1935 and of its extension by the Act of June 14, 1937, c. 335, 50 Stat. 257, and, again, by the Act of June 29, 1939, c. 250, 53 Stat. 927. See S. Rep. No. 14, 74th Cong., 1st Sess., pp. 1, 3; H. Rep. No. 148, 74th Cong., 1st Sess., pp. 2–5; H. Rep. No. 817, 75th Cong., 1st Sess., pp. 5–6; H. Rep. No. 807, 76th Cong., 1st Sess., p. 2; 79 Cong. Rec., Pt. 1, 753, 760, Pt. 2, 2124, 2135, 2150; 81 Cong. Rec., Pt. 5, 5321; 84 Cong. Rec., Pt. 7, 7555, 7559, 7573.

legislative history of the amendment as an aid to determining the question of construction raised by the demurrer. It held, instead, that the doctrine of *ejusdem generis* requires that the clause of the statute amended in 1934 be confined to matters similar to those dealt with in the other and unamended clauses. It held further that the language, thus limited, is too clear to permit resort to extrinsic aids. The position is inconsistent and indefensible. If language can ever be too plain to admit of extrinsic aids to interpretation (cf. *United States* v. *American Trucking Ass'ns,* 310 U. S. 534, 542–544; *United States* v. *Dickerson,* 310 U. S. 554, 561–562), it must surely be the language as written, not the language as read with the aid of a "rule" of construction. If *ejusdem generis* was admissible as an aid to interpretation so was legislative history—and by a clearer right of entry. Like other canons of construction, *ejusdem generis* is a guide to the ascertainment of meaning, not a judicially imposed principle to which legislation must conform (cf. *Texas* v. *United States,* 292 U. S. 522, 534; *Mason* v. *United States,* 260 U. S. 545, 554). In the process of judicial interpretation it may be an item of evidence; it is not an irrebuttable presumption. As an item of evidence, its weight rests upon the psychological and grammatical probability that general words were employed with the specific reference suggested by their context. It is therefore without weight where, as here, the nature and back-

ground of the amendment clearly show that general words were employed without regard to the context of the other clauses of the section for the special purpose of removing the type of limitation contained in those clauses. The District Court used the principle as a justification for ignoring the very considerations which indicate its inapplicability; its decision is refuted by the legislative materials which it refused to take into account (cf. *United States* v. *Dickerson, supra,* at p. 562).

United States v. *Keitel,* 211 U. S. 370, upon which the District Court relied (R. 52–54), affords no support for this result. In that case, the second count of the indictment charged a conspiracy to violate Section 4746 of the Revised Statutes, as amended by the Act of July 7, 1898, c. 578, 30 Stat. 718, by making and presenting false affidavits in connection with entries on coal lands. Section 4746, before the amendment, provided for the punishment of persons who procure the making or presentation of any false or fraudulent affidavit "concerning any claim for pension or payment thereof, or pertaining to any other matter within the jurisdiction of the Commissioner of Pensions." The amendment added following the words "Commissioner of Pensions" the words "or of the Secretary of the Interior" and made other changes which did not alter the reference of the section as a whole to pension claims. The Government contended that

by including the Secretary of the Interior, the amendment broadened the scope of the statute to cover the presentation of false affidavits in any matter before the Secretary, whether or not it was a matter of the sort that might fall within the jurisdiction of the Commissioner of Pensions. This Court rejected the contention on the ground that when "the original text and the amendments which were made are taken into view, the conclusion inevitably follows that the purpose of the amendment was but to more specifically define the pension or bounty land papers, etc., with which the statute was concerned, and to enlarge the operation of the statute in respect to such papers so as to cause it to be criminal to use the pension or bounty land papers, etc., to which the statute refers, as well before the Secretary of the Interior as before the Commissioner of Pensions" (211 U. S. at p. 396). Unlike the present case, the amendment did not provide for the repeal of the restrictive language of the provision and there was no legislative history to indicate an explicit purpose to broaden the scope of the statute in the manner which the Government urged. Nothing in the opinion of this Court suggests that the principle of *ejusdem generis* transcends the experiential ground upon which it rests, and while, as Mr. Justice Holmes observed, "every question of construction is unique" (*United States* v. *Jin Fuey Moy*, 241 U. S. 394, 402), the problem

of interpretation in the *Keitel* case presented none of the features which are determinative of the issue here.

Second. In addition to *ejusdem generis* the District Court emphasized the broad scope which the Government's contention would afford to Section 35 and the disparity between the maximum penalty of ten years imprisonment and $10,000 fine under that section and six months imprisonment and $2,000 fine under the Connally Act, itself. These considerations were apparently thought to point to an absurdity to be avoided by an interpretation confining the general language of the amendment within the limits accorded to the statute before the amendment was made.

Even if the consequences of the amendment were absurd, the District Court had no authority to ignore an explicit purpose to produce them and to nullify an enactment couched in words clearly adequate to effectuate that purpose.[8] The difference between the maximum penalty provided by Section 35 and that under the Connally Act is not substantially greater than the difference between the penalty under Section 35 and those provided by the National Industrial Recovery Act, appli-

[8] This Court has held that "the reasons for and significant circumstances leading up to the enactment may be noticed in confirmation of the meaning conveyed by the words used" even when the same considerations would have been inadmissible to impeach that meaning. *United States* v. *Missouri Pacific Railroad Company*, 278 U. S. 269.

cable to "hot" oil cases when Section 35 was amended in 1934.[9]

But more than this, the consequences of the amendment were not absurd. For what the amendment did, in substance, was to apply the policy against falsehood embodied in the traditional law of perjury to cases to which the sanctions of perjury might not apply, either because of the absence of an oath or of a "law of the United States" authorizing an oath to be administered (Criminal Code, Sec. 125, U. S. C., Title 18, Sec. 231). That the specified falsifications "in matters within the jurisdiction of any department or agency of the United States" merited broad condemnation was plainly a reasonable determination for Congress to make, especially at a time when the responsibilities of executive agencies were being increased on a large scale. The fact that the prohibited falsification might in some instances be a step leading to the commission of another crime punishable by a less severe penalty is no more anomalous than the similar possibility in the case

[9] The maximum penalty provided by the National Industrial Recovery Act for violating a Presidential order issued under Section 9 (c) was six months imprisonment and a fine of not more than $1,000. The penalty provided for violating an order issued under Section 10 (a) of the Act was six months imprisonment and a fine of not more than $500. See *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 406–407. The "hot" oil cases to which the Senate Committee report refers were, of course, subject to prosecution under these provisions.

of perjury.[10] The statute speaks in general terms and the penalty provided is a maximum, not a minimum. The District Court is free to take into account, in imposing sentence upon conviction for the falsification, the legal and moral quality of the end which the false statement was designed to achieve. If, nonetheless, there is support for the view that the sanction chosen was excessive—judging in terms of the "meager and uninterpreted experience" which must be relied upon in such matters (*Tigner* v. *Texas,* 310 U. S. 141, 148), there is no support for the view advanced by the court below that Congress could not conceivably have chosen it. In taking that position, the court succumbed to the "danger that the courts' conclusion as to legislative purpose will be unconsciously influenced by the judges' own views" *United States* v. *American Trucking Ass'ns,* 310 U. S. 534, 544) and permitted "attempted interpretation of legislation" to become "legislation itself" (*Palmer* v. *Massachusetts,* 308 U. S. 79, 83).

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[10] It is significant in this connection that the bill first enacted by Congress, in the development of the legislation in question, provided a maximum punishment of five years imprisonment and $5,000 fine, substantially the same as the punishment for perjury, and that the bill was vetoed by the President on the ground that the penalty was half that provided by Section 35 of the Criminal Code. See pp. 15–16, *supra.* Thus the attention of Congress was specifically directed to Section 35 and to the penalty provided by that section.

Third. It may be added that none of the other courts which have passed on the effect of the 1934 amendment to Section 35 of the Criminal Code has expressed a doubt that the effect of the amendment was to make the prohibition of the statute applicable whether or not the falsification threatened the money or property of the Government.[11] In *United States* v. *Goldsmith*, 108 F. (2d) 917 (C. C. A. 2d), certiorari denied, 309 U. S. 678, rehearing denied, 310 U. S. 657, the defendant was convicted of violating the statute by procuring the making of false statements to consular officers for the purpose of securing the issuance of quota immigration visas to aliens. The Circuit Court of Appeals rejected the defendant's contention that the statute did not apply and held that under the amendment "the element of pecuniary loss to the government is no longer an essential ingredient of the crime" (p. 919). In the petition for a writ of

[11] *United States* v. *Goldsmith*, 108 F. (2d) 917 (C. C. A. 2d), certiorari denied, 309 U. S. 678, rehearing denied, 310 U. S. 657; *United States* v. *Presser*, 99 F. (2d) 819, 822 (C. C. A. 2d); *United States* v. *Mellon*, 96 F. (2d) 462, 463 (C. C. A. 2d), certiorari denied, 304 U. S. 586; *United States* v. *Crittenden*, 24 F. Supp. 84, 87 (W. D. N. Y.); see also *Spivey* v. *United States*, 109 F. (2d) 181, 185 (C. C. A. 5th), certiorari denied, 310 U. S. 631; *Fuller* v. *United States*, 110 F. (2d) 815 (C. C. A. 9th), certiorari denied October 14, 1940, No. 220, present Term, where the question was not raised in the lower courts or in the petition for certiorari but was mentioned in the Government's brief in opposition and in the petitioner's reply thereto.

certiorari in the *Goldsmith* case, the petitioner complained of this ruling, and in its brief in opposition (No. 729, October Term, 1939, pp. 6–11) the Government argued that the issue is foreclosed by the language and history of the amendment. This Court denied certiorari and subsequently denied rehearing.[12]

II

SECTION 35 OF THE CRIMINAL CODE, AS AMENDED, WAS NOT IMPLIEDLY REPEALED BY THE CONNALLY ACT, INSOFAR AS IT WOULD APPLY TO THE FILING OF FALSE AFFIDAVITS WITH A FEDERAL TENDER BOARD CREATED PURSUANT TO THAT ACT

First. The opinion of the District Court states as one of the defendant's contentions "that the Connally Act was intended to cover the entire field or subject matter of excluding hot oil from Interstate Commerce with the consequent repeal of all other provisions dealing with it" (R. 51). The contention, which was not specifically raised by the appellees in their demurrer to the indictment (R. 27–43), was not passed upon by the District Court, as we read the opinion sustaining the de-

[12] The brief in opposition in the *Goldsmith* case quoted in full, in the Appendix, the opinion below in the instant case and pointed out (pp. 13–14) that the *Goldsmith* case had been brought to the attention of the District Judge and that he had been requested to postpone entry of judgment until this Court acted on the petition for writ of certiorari. While the District Judge postponed entry of judgment, he adhered to his original view after the denial of certiorari in the *Goldsmith* case, and sustained the demurrer (R. 61).

murrer. It might, therefore, be doubted whether the issue is open in this Court on the Government's appeal, under the rule enunciated in *United States* v. *Borden Co.*, 308 U. S. 188, 206–208; although compare *United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304. However, the District Court stated the issue broadly: "does section 80 (a), Tit. 18 of the Code apply to the facts charged in the indictment" (R. 48). If the "particular construction of the underlying statute" (*United States* v. *Borden Co.*, 308 U. S. at 207) was that it does not "apply to the facts charged in the indictment," the negation of an implied repeal would be necessary to overturn that construction. It may be suggested, moreover, that where there is an element of choice in stating the question of construction narrowly or broadly, a broad statement of the issue serves to remove the possibility that successive appeals by the Government may be necessary to establish the applicability of the underlying statute to the facts alleged in the indictment.

Second. Assuming then, that the issue of implied repeal is open on this appeal, the Government submits that plainly no such repeal occurred. It is the settled law of this Court that a later statute does not repeal an earlier one by implication unless it bears unmistakable evidence that such as the intention of the legislature; that when "there are two acts upon the same subject, the rule is to give effect to both if possible." *United States* v. *Borden Co.*, 308 U. S. 188, 198; *United*

States v. *Jackson,* 302 U. S. 628, 631; *Posadas* v. *National City Bank,* 296 U. S. 497, 503–504; *United States* v. *Burroughs,* 289 U. S. 159, 164; *General Motors Acceptance Corp.* v. *United States,* 286 U. S. 49, 61–62. The Connally Act is in no way inconsistent with Section 35 of the Criminal Code and there is no evidence that it was intended to provide the exclusive sanction for dealing with falsification in affidavits filed under the system of enforcement authorized in general terms by Section 5. The Connally Act contains no provision punishing false affidavits. It provides a general sanction for violation of the Act or of the regulations promulgated thereunder. It is true that a false monthly affidavit violates Regulation XIV of Executive Order No. 6980–B, promulgated under Section 5, on March 1, 1935 (*infra,* p. 39), which requires that monthly affidavits be filed and that they be truthful. But it can hardly be contended that an executive order issued after the enactment of the Connally Act which condemns the presentation of untruthful affidavits evidences the intention of Congress to repeal, by the statute under which the regulation was promulgated, all the other provisions of law condemning the making of false affidavits. Insofar as the executive order covers the same ground as Section 35, it provides no more than a "cumulative, or auxiliary" sanction (*Wood* v. *United States,* 16 Pet. 342, 363), paralleling not

only Section 35 but the perjury statute as well.[13] That the same act should be subject to prosecution as a felony or as a misdemeanor is one of the commonplaces of contemporary penal legislation. Moreover, the Executive Order covers a broader field than Section 35 for it applies not only to the filing of untruthful affidavits but also to a failure to file.

While there is no evidence that the Connally Act was intended to work an implied, partial repeal of the provision of Section 35 of the Criminal Code which applies to false affidavits, there is convincing evidence that no such repeal was intended. In the first place, as we have pointed out above,[14] the legislative history of the 1934 amendment to Section 35 shows that one of the specific purposes of Congress was to render the prohibition applicable to persons who presented false papers in connection with the shipment of "hot oil," in violation of the regulations promulgated under Section 9 (c) of the Na-

[13] Cf. *Capone* v. *United States*, 51 F. (2d) 609 (C. C. A. 7th), certiorari denied, 284 U. S. 669, holding that Section 35, as applied to the cheating of the Government in an income tax matter, was not impliedly repealed by the income tax statutes dealing with the same subject matter. See also *Madden* v. *United States*, 80 F. (2d) 672 (C. C. A. 1st), holding that the forgery statute (Criminal Code, Sec. 28) was not impliedly repealed by the National Industrial Recovery Act in cases where forgeries were made on documents used to carry out the provisions of the act and regulations thereunder.

[14] See pp. 13–19, *supra*.

tional Industrial Recovery Act, a situation in every way analogous to the presentation of false affidavits to a Federal Tender Board established under the Connally Act.[15] In the second place, when Congress extended the Connally Act in 1937, it had before it a report of the Department of Justice showing that prosecutions had been instituted under Section 35 in cases where false affidavits had been presented to the Federal Tender Board.[16] When the Connally Act was extended in 1939, a specific objection was made at the hearing against the prosecution of false affidavit cases under Section 35 of the Criminal Code and an amendment was proposed to Section 6 of the Connally Act to require that such prosecutions be brought under that Section.[17] Neither in 1937 nor in 1939 is there any Congressional intimation that Section 35 was being applied in a field to which it had been rendered inapplicable by the Connally Act. Finally, the portion of Section 35 of the Criminal Code involved in the instant case, which is codified as Sec. 80, Title 18, of the United States Code, was

[15] See pp. 19–22, *supra*.

[16] See Report on Federal Petroleum Enforcement in East Texas from October 22, 1934, to December 31, 1936, in Hearings before the Subcommittee of the Committee on Finance, United States Senate, 75th Cong., 1st Sess., on S. 790, pp. 31, 33, 39, 43, 45.

[17] See Hearing Before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 76th Cong., 1st Sess. on S. 1302, H. R. 4547 and H. R. 2308, pp. 135–139.

itself reenacted by the Act of April 4, 1938, c. 69, 52 Stat. 197, with only the omission of a comma, although a substantive change was made in the portion of Section 35 which is codified as Section 82 of Title 18, reducing the penalty provided in cases of petty theft and depredation (See H. Rep. No. 1762, S: Rep. No. 1497, 75th Cong., 3d Sess.). It is clear, therefore, that the enactment of the Connally Act did not affect the operation or scope of Section 35 of the Criminal Code and that this view has had the affirmative acquiescence of the Congress.

CONCLUSION

For the reasons stated, we respectfully submit that the District Court's construction of Section 35 of the Criminal Code, as amended, was erroneous; that the substantive counts of the indictment allege a violation of the statute; and that the judgment sustaining the demurrer should be reversed and the cause remanded for further proceedings.

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O. JOHN ROGGE,
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NOVEMBER 1940.

APPENDIX A

The portion of Section 35 of the Criminal Code, as amended by the Act of June 18, 1934, c. 587, 48 Stat. 996, which is codified as Section 80 of Title 18 of the United States Code, provides: [1]

> Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof, or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or *entry,* in any matter within the jurisdiction of any department or agency of the United States

[1] This portion of Section 35 was reenacted by the Act of April 4, 1938, c. 69, 52 Stat. 197, except for the omission of the comma after the italicized word "entry."

or of any corporation in which the United States of America is a stockholder; * * * shall be fined not more than $10,000 or imprisoned not more than ten years, or both.[2]

Section 5 of the Connally "Hot Oil" Act of February 22, 1935, c. 18, 49 Stat. 30, 31 (U. S. C., Supp. V, Title 15, Sec. 715d), provides, so far as pertinent:

> SEC. 5. (a) The President shall prescribe such regulations as he finds necessary or appropriate for the enforcement of the provisions of this Act, including but not limited to regulations requiring reports, maps, affidavits, and other documents relating to the production, storage, refining, processing, transporting, or handling of petroleum and petroleum products, and providing for the keeping of books and records, and for the inspection of such books and records and of properties and facilities.
>
> (b) Whenever the President finds it necessary or appropriate for the enforcement of the provisions of this Act he shall require certificates of clearance for petroleum and petroleum products moving or to be moved in interstate commerce from any particular area, and shall establish a board or boards for the issuance of such certificates. A certificate of clearance shall be issued by a board so established in any case where such

[2] Other portions of Section 35 of the Criminal Code are codified as Secs. 82, 83, 84, 85, and 86 of Title 18 of the United States Code. By the Act of April 4, 1938, c. 69, 52 Stat. 197, Section 35 was divided into subsections (A), (B), and (C). Those portions which are codified as Secs. 80, 83, 84, and 85 of Title 18 were grouped in subsection (A); the portion codified as Sec. 86 was made subsection (B); and the portion codified as Sec. 82 was made subsection (C).

board determines that the petroleum or petroleum products in question does not constitute contraband oil. Denial of any such certificate shall be by order of the board, and only after reasonable opportunity for hearing. Whenever a certificate of clearance is required for any area in any State, it shall be unlawful to ship or transport petroleum or petroleum products in interstate commerce from such area unless a certificate has been obtained therefor.

* * * * *

Section 6 of the Connally "Hot Oil" Act of February 22, 1935, c. 18, 49 Stat. 30, 32 (U. S. C., Supp. V, Title 15, Sec. 715e), provides:[3]

> SEC. 6. Any person knowingly violating any provision of this Act or any regulation prescribed thereunder shall upon conviction be punished by a fine of not to exceed $2,000 or by imprisonment for not to exceed six months, or by both such fine and imprisonment.

Section 9 (c) of the National Industrial Recovery Act of June 16, 1933, c. 90, 48 Stat. 195, 200, provided:

> (c) The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any

[3] The duration of the Connally Act was extended for two years by the Act of June 14, 1937, c. 335, 50 Stat. 257, and again for three years by the Act of June 29, 1939, c. 250, 53 Stat. 927.

board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both.

Executive Order No. 6979, issued by the President pursuant to the Connally Act, February 28, 1935, provides:

> By virtue of and pursuant to the authority vested in me by section 11 of the Act entitled "An Act To regulate interstate and foreign commerce in petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of State law, and for other purposes", approved February 22, 1935 (Public Number 14, 74th Congress), I hereby designate and appoint the Secretary of the Interior as the agent of the President to execute all of the powers and functions vested in the President by the said Act except those vested in him by section 4 thereof: *Provided,* that no regulation issued under section 5 (a) of the said Act the violation of which is punishable by fine or imprisonment shall be effective unless and until approved by the President.

Regulation XIV of Executive Order No. 6980–B, promulgated by the Secretary of the Interior under the Connally Act and approved by the President March 1, 1935, provides:

REGULATION XIV

> Each producer, refiner, reclamation plant, casinghead gasoline plant, pipe line, and storer of petroleum or petroleum products

> in any designated area shall file with the Board for said area monthly reports on forms approved by the Secretary of the Interior. Each report on such forms shall be subscribed and sworn to by the person required to file the same, using the form of affidavit therein contained, and the person required to file the report must make therein a full, truthful and complete disclosure of all the information required on the form and necessary to the full use thereof.

Executive Order No. 6980–C, promulgated under the Connally Act by the Secretary of the Interior and approved by the President March 1, 1935, provides, so far as pertinent:

> By virtue of and pursuant to the authority vested in me by the Act of Congress entitled "An Act to regulate Interstate and Foreign Commerce in petroleum and its products by prohibiting the shipment in such commerce of petroleum and its products produced in violation of State law, and for other purposes", Public No. 14, 74th Congress, approved February 22, 1935, and the Executive Order of the President of the United States, No. 6979 (February 28, 1935), and pursuant to my order No. 1, this date promulgated thereunder; and
>
> WHEREAS, I find that large quantities of contraband oil, as defined in said Act of Congress, are originating in the East Texas Field * * *
>
> WHEREAS, I find that it is necessary and appropriate for the enforcement of the provisions of said Act to require certificates of clearance for petroleum and petroleum products moving or to be moved in interstate

commerce from said East Texas Field, and to establish a Board for the issuance of such certificates; and

WHEREAS, I find by reason of the matters and things hereinabove set forth that the regulations prescribed by my order No. 1 under said Act are necessary and appropriate for the enforcement of the provisions of said Act in said East Texas Field:

NOW, THEREFORE, it is ordered:

ARTICLE I

That part of the State of Texas included within the Counties of Gregg, Upshur, Smith, Rusk, and that part of Cherokee County covered by the Miguel de los Santos Coy, Pratt and Wesley Dikes Surveys (to be known as the East Texas Field) is hereby constituted a designated area within the meaning of Regulation II of my order No. 1 under said Act and Executive Order, and the regulations prescribed by said order shall apply to all petroleum and petroleum products originating in said area and to all persons producing, refining, processing, manufacturing, storing, shipping or transporting petroleum or petroleum products originating in said area.

ARTICLE II

I hereby appoint and designate Norman L. Meyers, Chairman, M. S. McCorquodale and John F. Davis to act as a Board to be known as Federal Tender Board No. 1, for the purpose of issuing certificates of clearance for such area under said Act and administering the regulations prescribed by my order No. 1 under said Act and Executive Order. The principal office of Federal

Tender Board No. 1 shall be located at Kilgore, Texas.

ARTICLE III

Federal Forms numbered 1, 2, 3 and 4, including the reverse sides thereof, copies of which are annexed hereto, are hereby approved and made a part of this Order as though fully set forth herein. Applications for certificates of clearance in the respective situations to which said forms are applicable, supporting affidavits for said applications, and returns by transporters shall be made on said forms in accordance with the instructions appearing on said forms.

ARTICLE IV

Federal Forms A, B, C and D, including the reverse sides thereof, copies of which are annexed hereto, are hereby approved and made a part of this Order as though fully set forth herein. Monthly reports by refineries, reclamation plants, casinghead gasoline plants, pipe lines and producers operating in the East Texas Field shall be made on said forms in accordance with the instructions appearing on said forms.

ARTICLE V

All terms defined in said Act or in my order No. 1 prescribed under said Act and Executive Order shall, when used in this Order or in the forms approved hereby, receive the definition given in said Act or Order.

ARTICLE VI

The operation of this Order shal lbegin at seven A. M., March 1, 1935.

APPENDIX B

The letter of the Secretary of the Interior dated May 2, 1934, to the Chairman of the Committee on the Judiciary, United States Senate, reads:

THE SECRETARY OF THE INTERIOR,
Washington, May 2, 1934.

Hon. HENRY F. ASHURST, *Chairman,*
Committee on the Judiciary,
United States Senate.

MY DEAR SENATOR ASHURST: There is transmitted herewith a draft of a proposed bill, providing a penalty for the knowing or willful presentation of any false written instrument relating to any matter within the jurisdiction of any department or agency of the Government.

This proposed bill is intended to reach the large number of cases involving the shipment of "hot" oil, where false papers are presented in connection therewith, and also those cases within the Public Works Administration where contractors are performing work payable from the Public Works Administration appropriation, and false certificates are made as to the actual wages paid.

I wish to call your attention to the fact that an attempt was made to secure legislation of this kind in the submission of Senate 2686, which bill passed the Senate February 20, but there was substituted therefor H. R. 8046, which bill passed both houses and was the subject of the veto of the President on April 17, on recommendation of the Department of Justice.

It is believed that the present bill is broad enough in terms to include all governmental agencies and the penalties have been increased to make it consistent with the penalties specified in Section 80 of the Criminal Code.

The early enactment of this legislation is highly desirable to this Department in order to secure prosecutions while expenditures are being made of Public Works Administration funds and during the life of the National Industrial Recovery Act of June 16, 1933, which expires by limitation two years after date of passage and is the source of the regulations under Section 9 (c) thereof, prohibiting the transportation of "hot" oil in interstate and foreign commerce.

It is respectfully requested that the proposed measure be placed before the Senate for appropriate action.

Sincerely yours,

(Sgd.) HAROLD L. ICKES,
Secretary of the Interior.

Inclosure 273941.

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